IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 125 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAKASH MORLI KASHYAP

Versus

STATE OF GUJARAT

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Appearance :

MS SADHANA SAGAR for Appellant
PMR SP HASURKER APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 25/08/2005

ORAL JUDGMENT

1 Present appellant and two more accused were tried by learned Joint District Judge and Additional Sessions Judge, Fast Track Court, Ahmedabad (Rural), Ahmedabad, in Sessions Case No. 10 of 2001, for the charges under Sections 394 and 120-B of the Indian

Penal Code. After recording of the evidence of almost 13 witnesses and considering other documents submitted by the prosecution to prove the case against the accused, and after hearing both the parties, learned Trial Judge, vide his judgment and order dated 29th of October, 2002, convicted all the three accused, including present appellant, for the offences punishable under Sections 394 and 120B of the Indian Penal Code. Each of the three accused including present appellant was sentenced to undergo rigorous imprisonment of seven years and to pay fine of Rs. 5,000/-, in default, to undergo simple imprisonment of six months. No separate sentence was awarded for the charges levelled against the accused under Section 120(B) of the Indian Penal Code as the above said sentence was awarded to all the accused for the charges levelled against them under Section 394 of the Indian Penal Code. Learned Trial Judge also permitted the period of custody undergone by the accused during trial to be given set off towards the sentence awarded to the accused.

2 Being aggrieved and dissatisfied by the above said judgment and order, out of the three accused of said Sessions Case, present appellant preferred this Criminal Appeal, which was admitted by this Court on 4th of August, 2003. During pendency of Appeal, the appellant was not released on bail.

3 The incident in question took place on 29th of August, 2000 at 13.00 hours wherein all the three accused along with other absconding accused joining hands and hatching conspiracy kept surveillance upon the complainant Manilal Maganbhai Patel, and while on his scooter, complainant after withdrawing amount of Rs. 70,000/- from Bhagyodaya Cooperative Bank, was coming towards his residence, in all four persons apprehended him and by pelting stones injured the complainant on his head. On account of that, his scooter was fallen down on the earth and he was surrounded by the accused, who snatched the bag of the complainant contained in all Rs. 1,20,000/-.

4 Learned Advocate Ms. Sadhana Sagar for the

appellant and learned APP Mr. S.P. Hasurker were heard in respect of this Appeal. During submissions on behalf of the appellant, when learned Advocate for the appellant made unsuccessful attempts to argue the Appeal on merits, she restricted her arguments only in respect of the quantum of sentence. It was submitted that this is the first offence committed by the appellant and at present he is aged about 30 to 31 years. The appellant has his family and he is the only bread winner of his family. Family of the appellant is very poor and by reducing the sentence if an opportunity is afforded to the appellant for reforming himself, he shall try to remain as a good and peace loving citizen. It is submitted that the appellant has already undergone more than five years sentence of imprisonment out of seven years imprisonment inflicted upon him, and if the sentence is reduced to some extent, the family of the appellant which is very poor, will have its bread winner back, which will serve the purpose of justice. Learned APP Mr. S.P. Hasurker was heard in respect of the submissions made for reduction sentence.

5 Having heard rival contentions when now Appeal is confined only for the quantum of punishment, it is necessary to evaluate in what circumstances submission for reduction of sentence can be appreciated. The object of punishment is deterrent, reformative and retributive. Punishment serves a purpose inasmuch as it acts deterrent for those who have propensity to commit such offences. While inflicting punishment, two objectives i.e. (i) punishing the criminal not to repeat the crime, and (ii) attempt to reform him to be a respectable member of the society must be taken into consideration.

6 Now first perusing the factual data of the punishment undergone by the appellant is concerned, learned APP has placed on record jail remarks dated 25th of August, 2005 in regard to the appellant. Accordingly, today, the appellant has already undergone actual imprisonment after conviction for two years 9 months and 27 days. In pursuance of the judgment of the Trial Court, the appellant is

entitled to set off the period of two years one month and 3 days which he has undergone during trial. According to law, in addition to this, the appellant is entitled to remission period of nine months and 24 days. Therefore, considering the period given in set off, the period for which the appellant has actually undergone the imprisonment after conviction and considering the period of remission earned by the appellant, today the appellant has undergone imprisonment of five years 8 months and 24 days out of imprisonment of seven years inflicted upon the appellant though the appellant is also directed to pay fine of Rs. 5000/- in default to undergo imprisonment of six months.

7 Considering the facts of this case within the scope of reduction of sentence though it cannot be denied that the crime committed by the appellant is of grave nature and came to be committed with designed and pre-meditation. The Section 394 of the Indian Penal Code invites punishment of imprisonment of life or punishment of imprisonment which may

extend to 10 years and fine. Having gone through the submissions made and having gone through the situation of the appellant and having gone through the object to be achieved through punishments, it appears that in this case substantive sentence of seven years inflicted upon the appellant be reduced to some extent which would serve both the main purposes and objects of punishment i.e. deterrent as well as reformative. The appellant has undergone 5 years 8 months and 24 days imprisonment which would be sufficient to achieve deterrent purpose. Reducing the quantum of punishment by one year and couple of months, would surely encourage the appellant and his family members to be respectable member of society and thereby the reformative purpose and objects of the punishment would also be served. Therefore, this Appeal can be allowed to the extent that the substantive sentence of seven years inflicted upon the appellant be reduced to the undergone, which period comes to, as calculated above, five years, 8 months and 24 days. While no interference is required so far as the fine is imposed upon the appellant by

the Trial Court and quantum of punishment inflicted in default.

8. In the result, this Appeal is partly allowed and only interference in the judgment and order impugned is made to the extent of the quantum of substantive sentence of imprisonment, that the appellant is sentenced to imprisonment which he has already undergone which comes to 5 years 8 months and 24 days, instead of 7 years imprisonment inflicted by the Trial Court. The judgment and order of the Trial Court in respect of imposing fine of Rs.5,000/- upon the appellant and to undergo imprisonment of six months in default is not interfered with. The remaining order of Trial Court in respect of muddamal, etc. is also not interfered with. The appellant be set to liberty when the sentence is completed as aforesaid, if he is not required to be detained for any other purpose.

(J.R.VORA, J.)

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